

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	11-CR-00199(CBA)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	
BENITO LOPEZ-PEREZ, ET AL.,	:	Friday, January 10, 2014
	:	9:30 a.m.
Defendant.	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE CAROL B. AMON
UNITED STATES CHIEF DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript
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1 (In open court.)

2 (Judge CAROL B. AMON enters the courtroom.)

3 THE COURTROOM DEPUTY: The United States against
4 Benito Lopez-Perez.

5 Please state your appearances for the record.

6 MS. MERKL: Taryn Merkl and Erik Paulsen for the
7 United States.

8 Good morning, Your Honor.

9 MR. PAULSEN: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. MIEDEL: Good morning, Your Honor.

12 Florian Miedel for Mr. Benito Lopez.

13 THE COURT: Good morning.

14 MR. MORRIS: Douglas Morris, Federal Defenders,
15 standing in for Peter Kirchheimer for Jose Gabino
16 Barrientos-Perez.

17 MR. RADICK: Robert Radick of Morvillo Abramowitz
18 Grand for Anastasio Romero-Perez.

19 THE COURT: Good morning.

20 All right, I think this matter was put on the
21 calendar today to deal with the issues surrounding the guilty
22 plea of Mr. Benito Lopez-Perez. Other counsel had expressed a
23 desire to be here, but I don't think there are other issues
24 regarding other counsel?

25 MS. MERKL: I think that's generally correct,

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1 Your Honor.

2 Although I did want to just inquire after the close
3 of the proceedings as to the status of the outstanding issues
4 pertaining to sentencing that you had asked for further
5 briefing on.

6 THE COURT: Why don't you address that now.

7 MS. MERKL: Yes, Your Honor.

8 At the prior proceeding that was to have originally
9 been the sentencing proceeding, the Court had raised questions
10 regarding the appropriateness of proceeding on the restitution
11 in the manner advanced by the Probation Department, the
12 Government submitted some briefing and some supporting case
13 law in support of that approach.

14 I also just recently received a transcript of
15 another court in this court that adopted that same approach
16 under the Second Circuit's analysis. I'm happy to submit that
17 transcript to Your Honor should you like that additional
18 authority.

19 THE COURT: How is it calculated, though? Is
20 restitution calculated for each of the victims?

21 MS. MERKL: The way that the Government had, the way
22 that the victims had submitted their affidavits to Probation
23 was based on their --

24 THE COURT: Lost fees?

25 MS. MERKL: Their lost revenue from the work that

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1 they were required to do, and I believe not all, I don't think
2 all four Jane Does submitted the loss affidavit, but for those
3 who did, that was the manner in which they had calculated
4 their restitution.

5 THE COURT: Well, obviously, it can only --
6 restitution only goes to counts of conviction. So have you
7 separated that out? Is that clear?

8 In other words, the restitution goes to the victim
9 they entered a guilty plea to, not to other victims.

10 MS. MERKL: Correct.

11 And defendants pled to different Jane Does, so we
12 will make sure that is completely clear, but I believe that it
13 is separated by Jane Doe.

14 THE COURT: Maybe.

15 MS. MERKL: And then, Your Honor, the other issue
16 that was outstanding that I know is of concern to the victims
17 in this case is whether Your Honor has reached a decision on
18 permitting the Jane Does to proceed anonymously.

19 We submitted authority in support of our request to
20 allow that, and the service providers and lawyers who are
21 helping those victims are trying to determine how they plan to
22 proceed with regard to that February sentencing date. So if
23 at all possible we would like to have some guidance from the
24 Court as to your intentions in permitting the Jane Does to
25 proceed anonymously.

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1 THE COURT: Well, I think they were going to just
2 testify by their first names; correct? The way they had
3 submitted affidavits.

4 MS. MERKL: Some, I believe one of the Jane Does was
5 prepared to use her first name.

6 THE COURT: Who is that?

7 MS. MERKL: Jane Doe 1 -- no, I'm sorry,
8 Jane Doe 4 -- honestly, Your Honor, I'd have to go back and
9 double-check with their attorneys because people have
10 different comfort levels at different points in time.

11 THE COURT: Well, if I don't know what their
12 position is, I don't know.

13 MS. MERKL: Well, in my letter we asked for the
14 Court to issue an order as to whether or not they would be
15 permitted to proceed under Jane Doe, just Jane Doe, or whether
16 they would be required to disclose some portion of their name.

17 THE COURT: Well, but let's not make an issue out of
18 something that doesn't need to be made an issue out of.

19 If they are not objecting to being identified by the
20 name that is some of the parties have become familiar with,
21 such as Carmen, et cetera, then why don't we determine what
22 has to be decided?

23 MS. MERKL: I know that two of the victims are not
24 comfortable disclosing their names. One of them may be.

25 So we don't have a monolithic issue. They are

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1 individuals with different preferences and concerns.

2 THE COURT: All right. I don't think there was any
3 response by defense to your submission on that, because on the
4 day in question, no one objected to, from the defendant team
5 objected to it.

6 MS. MERKL: Mr. Kirchheimer had expressed some
7 objections.

8 MR. RADICK: Mr. Kirchheimer did have some
9 objections, Your Honor, to my recollection. And it's an issue
10 that we've been discussing, Mr. Kirchheimer and I have been
11 discussing.

12 We were also intending to discuss it with Mr. Miedel
13 depending on where things went with today's proceeding. It
14 might have changed the entire scope of this case, depending on
15 what happened here today.

16 THE COURT: What changes the entire --

17 MR. RADICK: If there was not a guilty plea entered
18 here today.

19 THE COURT: Oh, yes.

20 MR. RADICK: It was unclear where we were going.

21 THE COURT: Right.

22 MR. RADICK: And we would need to address the
23 victims' identity at sentencing or not. So, that I think that
24 what would be useful is for us on this side of the room have a
25 little bit further discussion about the issue.

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1 It is also unclear to me, Judge, whether what the
2 Government is proposing is that the victims identify
3 themselves to the Court in some fashion at all, whether
4 privately or in open court, or if the Government is simply
5 saying the Court doesn't need to know their names in any way
6 whatsoever; that they should simply be allowed to identify
7 themselves to the Court anonymously, and you would, there
8 would be no record of their actual names before they
9 presumably give statements under oath, victim impact
10 statements before Your Honor.

11 That would raise some concerns, at least, at the
12 very least, if they were not going to identify themselves to
13 the Court whatsoever.

14 THE COURT: You know, I have to know who's who
15 regarding the charges in the indictment. I have to have some
16 identification that this person is the person referred to in
17 Count 2, or the person referred to in Count 3.

18 MS. MERKL: Right. And we had anticipated using
19 their Jane Doe numbers, which have been used consistently
20 throughout the case.

21 MR. RADICK: Your Honor --

22 MS. MERKL: And just to make clear, the name,
23 Mr. Radick, is not correct, that the victims would be speaking
24 under oath, and I don't think that is a requirement of a
25 victim impact statement. I don't think they would have a

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1 concern about that, but that's certainly not the normal
2 practice.

3 MR. RADICK: It is not, Your Honor. I think before
4 they make statements to the Court that are going to be used to
5 effect the sentences of the individual defendants, these
6 victims should be identified to the Court whether they, at
7 very least and I don't want to speak yet to the public
8 identification, but at the very least the Court should know
9 who they are, by their names, so that if it turns out that
10 anything they said turned out not to have been truthful, that
11 there is a way of actually making there be some meaningful
12 penalty for that.

13 It seems very bizarre to me to have the Court hear
14 from people you don't even really know who they are.

15 THE COURT: Well, if we all know, basically, that,
16 who Jane Doe 1 is, who Jane Doe 2 is, who Jane Doe 3 is. If
17 they identify themselves by that name in court and the
18 Government confirms that is the person, which they can do, the
19 Government can confirm that that is the person that we have
20 identified as Jane Doe Number 1, why isn't that satisfactory?

21 MR. RADICK: They should identify themselves.

22 THE COURT: So you want to have them identify
23 themselves on the record like in some sealed fashion?

24 MR. RADICK: At the least, yes. That's what I'm
25 saying.

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1 I think that's actually necessary for the proceeding
2 to be appropriate and meaningful.

3 THE COURT: Has anyone responded to what the
4 Government said? Has there been a response filed by any of
5 the defendants with regard to the Government's submission?

6 MS. MERKL: There hasn't, Your Honor.

7 And I would be very curious to see if there is any
8 authority for the requirement under the Crime Victim Rights
9 Act that they are required in some fashion to state their
10 names. The case law that we were able to locate did not have
11 that requirement.

12 THE COURT: It seems like we're already at
13 January 10th, when did you file your letter? It was already
14 some time ago.

15 MS. MERKL: It was within a week after the prior
16 sentencing proceeding.

17 THE COURT: And I think that was November 21st?

18 MS. MERKL: I believe so.

19 THE COURT: I'd be very surprised if there are some
20 objections to this procedure that we're all sitting around
21 hear being it now.

22 MR. RADICK: I mentioned, Your Honor, that we wanted
23 to see where we went with today's proceeding.

24 THE COURT: I don't know why that would really make
25 a difference.

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1 Your clients had entered guilty pleas, their
2 sentencings are scheduled. I don't know why that would have
3 changed.

4 MR. RADICK: Because it was a global plea agreement,
5 Your Honor, that the Government could potentially have
6 withdrawn the entire plea for everyone and proceeded to trial,
7 had Mr. Miedel's client decided not to enter his plea today.

8 THE COURT: Did the Government advise counsel that
9 that was under consideration?

10 MR. RADICK: Yes.

11 THE COURT: The other issue that, were there any
12 other issues that you wished to address?

13 MS. MERKL: No, Your Honor.

14 THE COURT: The other issue that I had, and this may
15 have been addressed because I was actually focusing on the
16 plea this morning as opposed to the other issues, but the
17 Probation Department had indicated that their conversations
18 with the Bureau of Prisons indicated that they would get
19 credit for time served in Mexico, and as a result of that, the
20 Court should not take that into account in the sentence that
21 the Court imposes.

22 I believe one of the things that the Government was
23 going to do was make their own independent determination about
24 whether that was accurate or not.

25 MS. MERKL: Yes, Your Honor.

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1 I did call the sentencing calculation department and
2 inquired what they can do in the situation where it is an
3 international incarceration and they indicated that if it is
4 reflected -- that Probation Department was correct, that if it
5 is reflected in the PSR when they were incarcerated in Mexico,
6 that the Bureau of Prisons would take that date into account.
7 They were not going to wait and rely on the Mexican
8 authorities providing those documents, because as the Court
9 knows, that is obviously, that can be problematic.

10 They also, I asked if the Court made clear in its
11 judgment the method of calculation and ordered the BOP to take
12 that time into account, based on the date in the PSR, that
13 they would honor that.

14 THE COURT: So, it is going to be the Government's
15 proposal that in proposing sentence, I not give credit for
16 that, but I make a note on the J and C that it is my
17 understanding that they are getting credit for this, or they
18 should get credit for that? Because technically I can't order
19 the Bureau of Prisons to give credit for that.

20 MS. MERKL: My understanding is that it is BOP
21 policy since that was the period of time they were awaiting
22 extradition to give them credit as part of whatever the
23 sentence the Court imposes, and that they would rely on the
24 date in the PSR. That's what they've advised.

25 THE COURT: So is it no longer a part of the

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1 Government's agreement because we are adding the guilty plea
2 with regard to Mr. Miedel's client that will not object to
3 defendant's request that the sentence imposed by the Court
4 should be reduced by the duration of time the defendant was
5 incarcerated in Mexico?

6 MS. MERKL: That is absolutely part of the
7 Government's agreement, we will not object.

8 How, the manner of execution of that, is what we're
9 just trying to figure out, but we do not object.

10 MR. RADICK: Your Honor, may I be heard on this?

11 THE COURT: I think the problem is that it says the
12 sentence imposed by the Court. That is the problem with the
13 language.

14 Mr. Radick.

15 MR. RADICK: Yes, Your Honor.

16 I just want to remind the Court of something that I
17 mentioned last time we were in front of Your Honor and we
18 discussed this issue, which is that there's concern on our
19 part, and based on experience with the Bureau of Prisons and
20 difficulties in getting credit for time served for any
21 circumstances, let alone involving international and foreign
22 contentions, concern as to whether the Bureau of Prisons will
23 indeed give the credit that is being represented, that they
24 will give.

25 And in light of that, and in light of the plea

1 agreement, and in particular in light of the circumstances of
2 these defendants, my client, in particular, or maybe not
3 unique, does not speak or read English and not actually read
4 more than a very modest amount of Spanish.

5 If he ends up not getting credit for the time, his
6 only remedy would be to file a habeas petition in the
7 jurisdiction where he is incarcerated, wherever that may end
8 up being, without the benefit of counsel. And so rather than
9 have that risk, and rather than have a scenario where he does
10 not get credit because of the issues with the Bureau of
11 Prisons that have arisen in other cases that I have been
12 involved with, it would simply be better and consistent with
13 the plea agreement to reduce the sentence based on the time
14 served in Mexico, and to prevent the double-counting that
15 we've heard concerns about, I think, from the
16 Probation Department earlier, to simply make it clear that
17 credit has already been given on the judgment.

18 And so the Bureau of Prisons has recommended not to
19 give credit, and that way the issue is done. It doesn't arise
20 at a later point, and it certainly doesn't arise at a point
21 where my client is really effectively unable to remedy it.

22 MS. MERKL: Your Honor, I can inquire with the
23 sentencing computation people how they would interpret that
24 type of language in the judgment, and I can submit a letter.

25 THE COURT: Well, is that the Government's position

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1 as well? Because in your letter, and this is the plea we're
2 taking this morning, it says it will not object to the
3 defendant's request that the sentence imposed by the Court be
4 reduced by the duration of the time defendant was incarcerated
5 in Mexico.

6 The way that is phrased, it suggests that the
7 Government's position would be similar to what Mr. Radick has
8 just articulated.

9 MS. MERKL: Your Honor, it's certainly one
10 interpretation of that language, and I think that the goal of
11 the language, and I think that the spirit of the agreement was
12 that we recognize that they should get credit for the time
13 that they were incarcerated in Mexico, and if the best way to
14 communicate that to the Bureau of Prisons is the manner
15 Mr. Radick suggests, I will confer with the sentencing
16 computation folks and submit a letter to the Court advising
17 them how they would interpret that language in the J and C.

18 MR. RADICK: I'm sorry, but I think it is the only
19 way in which that language can be interpreted, is that there
20 is an agreement from the Government that the Court should give
21 credit or will not oppose giving of credit in the sentence
22 that is put on the judgment for these defendants.

23 It is not that we'll say it's okay or the Bureau of
24 Prisons later gives credit, it is that the Court should go
25 ahead and give them credit. That's the position that's in the

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1 agreement that was negotiated. I don't think there's really
2 more than one reasonable interpretation of that language and I
3 think that's what should happen.

4 THE COURT: Ms. Merkl, I mean, we're taking a plea
5 this morning with the same language.

6 MS. MERKL: I understand.

7 THE COURT: So, whatever happened in the past we can
8 talk about.

9 Mr. Miedel, what is your view of this? Your client
10 is entering a plea?

11 MR. MIEDEL: I agree with Mr. Radick. I also
12 believe if the Court puts in the J and C that it gave credit
13 for the time that these defendants spent in Mexico, and asked
14 the Bureau of Prisons not to give credit, I think the Bureau
15 of Prisons will honor that.

16 MR. RADICK: As I said at the last proceeding, it is
17 hard enough for us to get the Bureau of Prisons to give credit
18 when they should. They're certainly not going to give credit
19 when you tell them not to. So the concern that has been
20 expressed by --

21 THE COURT: Well, I'm not sure of that. I'm not at
22 all sure of that.

23 MR. RADICK: Based on my experience, I have trouble
24 believing that they're going to give double credit when there
25 is a part of the judgment that would say don't give credit.

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1 They don't like to give -- it's hard enough to get
2 credit in the first place. So to the extent there was a
3 concern, this is how this issue initially came up, because the
4 Probation Department, I think in an addendum, said that they
5 are already going to get credit, and so that there might be
6 double credit.

7 I find that to be exceedingly unlikely, if not
8 really functionally impossible, especially if you put in the
9 judgment that the Court's already taken into account the time
10 served in Mexico should be included that in the calculation of
11 the sentence and recommend that it not be.

12 THE COURT: Well, surely if they had not known that,
13 and I understand your position, Mr. Radick, but had they not
14 known it wasn't articulated in the judgment that I give
15 credit, I don't know why you would say they wouldn't get
16 credit assuming the Probation Department is right, because
17 they would give credit.

18 MR. RADICK: I am speaking solely under a scenario
19 where Your Honor makes clear in the judgment, as I mentioned
20 at the last court proceeding, that you give them credit.
21 Under those circumstances, how they could give credit a second
22 time, it's not possible.

23 And then, if it happens and the Government is, I
24 suppose, aggrieved, the Government won't be stuck in a cell
25 somewhere in Texas without a lawyer to help it remedy the

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1 problem, the Government can remedy the problem.

2 THE COURT: All right. But we do need to resolve
3 today before we go forward with the plea, or whether it is the
4 Government's position that you intend to recommend, as it
5 appears to say in the plea agreement, that I take this into
6 account, and that if the Probation Department is correct, you
7 would then ask the Court to mark the report that credit has
8 already been given, if that is your construction.

9 We need to have a similar construction of this
10 provision in the plea agreement before we go forward so that
11 everyone knows what we're talking about.

12 MS. MERKL: Your Honor, I tend to agree that the
13 Bureau of Prisons is not going to double count it, if it's
14 made completely clear on the face of the judgment, but I don't
15 work for the sentencing calculation department of the Bureau
16 of Prisons, so I can't promise that, obviously.

17 THE COURT: Well, I know you can't promise it. That
18 is not the position.

19 The question is what is your position in the plea
20 agreement? What are you agreeing to? I need to go over the
21 plea agreement. We can't have Mr. Miedel saying the plea
22 agreement means one thing and the Government saying the plea
23 agreement means something else.

24 So, what we need to reconcile now is what commitment
25 is the Government, in fact, giving to this defendant before we

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1 go forward with the plea. We can't have people from the get
2 go saying the agreement means two different things.

3 MS. MERKL: Understood. I think the agreement is
4 clear that we don't object to his getting credit for that time
5 in prison. I think the issue is just how to affect that in
6 the Court's judgment.

7 THE COURT: The agreement says it will not object to
8 the defendant's request that the sentence imposed by the
9 Court.

10 It doesn't say that we do not object to the
11 defendant's request that he get credit for the time
12 incarcerated in Mexico. If it said that, I would agree with
13 you. But it says that the sentence imposed by the Court
14 should be reduced.

15 That means to me that the Government will advocate
16 at the time of sentencing that whatever sentence I impose, I
17 reduce it by the amount of time he'd spent in Mexico. I think
18 that is the only rational construction of that provision.

19 The only way to do that -- two things. First of
20 all, I can reject that recommendation all together. I'm not
21 bound by that. I can say they're going to get credit, I'm
22 persuaded they're going to get credit, I'm not going to cause
23 confusion, so I'm not bound by that, for certain.

24 But the Government is bound by the plea agreement
25 that they've signed, and the only way it seems to me that the

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1 Government could abide by that condition and go forward is
2 perhaps the way that Mr. Radick has suggested.

3 MS. MERKL: Well, Your Honor, I totally understand
4 that we need clarity as to what the defendant's exposure is,
5 but most respectfully, I don't know that it is not a valid
6 construction for the judgment, the J and C to say the Court
7 orders the Bureau of Prisons to consider the time they were
8 incarcerated in Mexico in calculation of sentence.

9 I mean, that is also consistent with the plea
10 agreement, because the Bureau of Prisons is thus reducing the
11 sentence of the Court. And I am not trying to be overly
12 technical. I just want to make sure that we get it right for
13 the people who are actually going to calculate the sentence.

14 MR. RADICK: Your Honor, from my perspective, the
15 language is written the way it is for a very particular
16 reason, and that's to ensure that this be addressed up front
17 by the Court and not be left to the Bureau of Prisons in its
18 discretion, which then becomes very difficult to challenge or
19 refute. So I would, to just try to be able to bring this
20 home, I would ask the Court to just enforce that part of the
21 agreement as it's written in the language that it's written.

22 THE COURT: Well, for what is done in terms of the
23 pleas, no one is seeking to withdraw their plea based on this.

24 MR. RADICK: No. No. No one is seeking to withdraw
25 their plea based on this.

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1 THE COURT: Well, there is a past problem that the
2 Court would have to deal with because the guilty pleas have
3 already taken place with regard to the plea agreement.

4 But then there is a current problem that I am being
5 asked to accept the plea pursuant to an agreement that the
6 parties are telling me they have different views on. That has
7 nothing to do with what I think is going to happen.

8 I just don't know how I accept a plea pursuant to an
9 agreement that is not an agreement, because the parties have a
10 different view of what one provision means. I don't
11 determine what the -- the provision, it seems to me in the
12 first instance before a plea is accepted, has to be agreed on
13 by the parties.

14 Am I missing something, Mr. Miedel?

15 MR. MIEDEL: Your Honor, the way I read this
16 language is simply that the agreement between the parties is
17 that the Government will not object to us making that request
18 at the time of sentencing for you to reduce the sentence based
19 on the time that my client spent in Mexico.

20 How you decide to do that, ultimately, I guess, is
21 up to you, as you've indicated. Their position is simply that
22 they're not going to object to us making that request and
23 that's what it says in the plea agreement.

24 And I don't think that Ms. Merkl has stated anything
25 other than that she's not going to object to us making that

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1 request. So I don't think there is actually a disagreement.

2 THE COURT: Well, is it correct, Ms. Merkl, if
3 Mr. Miedel says to me, as Mr. Radick has said, Judge, I want
4 you to reduce the sentence by, pick a number, ten months,
5 because I don't trust the Bureau of Prisons to do that
6 correctly, and so I want you to reduce the sentence by ten
7 months. If you want to avoid a problem, put on the J and C
8 that I've already given him credit for that.

9 Is that something that you are not going to object
10 to?

11 MS. MERKL: We are not going to object. The party
12 that raised the double counting concern was the
13 Probation Department, and we endeavored to look into it at
14 Your Honor's request and to provide the factual answer to the
15 Court's question, but we don't object to their application
16 that they're going to make and have made when we originally
17 came for sentencing in this case.

18 I think Mr. Miedel's correct, that there's no
19 disagreement between the parties. It's just a question of how
20 Your Honor chooses to make it clear.

21 THE COURT: But you are not going object to his
22 request that the way I do it, this is what he's going to
23 request, is that the way I do it is that I take into account
24 the time in the sentence I impose and that I, to avoid the
25 double-counting concerns that Probation has noted, that I just

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1 mark that on the J and C that I've already given him credit.

2 You are not going to object to that.

3 MS. MERKL: No.

4 THE COURT: Okay. Then I suppose we don't have an
5 issue.

6 And obviously, you are going to maintain your
7 position with respect to the, that you have just articulated,
8 with respect to the other two defendants.

9 MS. MERKL: Of course.

10 THE COURT: And you are going to inquire, though,
11 and provide the Court with information that you gather from
12 the Bureau of Prisons about whether they would honor that
13 statement by the Court.

14 MS. MERKL: Absolutely.

15 MR. RADICK: Your Honor, I'm sorry. I'm not clear
16 which statement, the one about not giving credit or the one
17 about the one you recommend, which one?

18 THE COURT: I think the statement that the
19 Government indicated that they were going to inquire about was
20 whether if I gave the credit in my sentence, but put a
21 notation do not give credit again to the Bureau of Prisons,
22 whether that is something they would understand and honor,
23 because I believe, though, the information gathered by
24 everyone so far, as articulated this morning by Ms. Merkl, is
25 that they will give credit as set forth in the

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1 Probation Department, as set forth in the Probation report.

2 So, to the extent that the Government hadn't
3 articulated a position on that before, they have said this
4 morning that it is their understanding from speaking to the
5 Bureau of Prisons that if it is clearly shown in the
6 Pre-Sentence Report when they were picked up pursuant to the
7 warrants of the United States, and that period of time they
8 spent in Mexico, that's in the PSR, that they would give
9 credit.

10 So, it is the second question that Ms. Merkl is
11 seeking guidance on.

12 MR. RADICK: Thank you.

13 THE COURT: Where is the new plea agreement?

14 MS. MERKL: Your Honor, just so we have clarity of
15 the record, I just want to explain for the record what the
16 parties decided to do.

17 Mr. Lopez-Perez, as the Court knows, allocuted to
18 two counts in his prior plea proceeding, Count 3 and Count --
19 Count 4 and Count 12. Based on our review of the plea minutes
20 and our prior conversations in this case and my conversations
21 with Mr. Miedel, we don't see any defect with regard to
22 Count 12, and for the purpose of clarity, we decided to use
23 his same plea agreement that he already executed and we've
24 modified the references to Count 4 to make them references to
25 Count 3, and Mr. Miedel and I have initialed every handwritten

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1 change in the agreement and then the parties have signed the
2 signature page again on the back with today's date, and in the
3 prior proceeding, the plea agreement was marked as
4 Government's Exhibit Number 3.

5 It still has that annotation on it and I have added
6 an "A" after the 3 and today's date to differentiate it from
7 the prior plea agreement. So, this is now the original for
8 today's proceeding, which I believe, and the Court can
9 obviously choose to do what it prefers to do, that we only
10 need to deal with the Count 3 issue, but Count 12, from our
11 review of the record, seems fine.

12 I don't believe Mr. Miedel has any objection to the
13 Court maintaining its acceptance of that plea.

14 MR. MIEDEL: That's correct, Your Honor.

15 THE COURT: All right, can I see the new plea
16 agreement?

17 Let me ask another question, Ms. Merkl.

18 I think that with regard to the guideline
19 calculations, are you standing by the guideline calculations?
20 Because I had thought that you may have suggested -- because
21 they're different from Probation; correct?

22 MS. MERKL: They are different from Probation's,
23 Your Honor.

24 THE COURT: And didn't you concede in part that
25 Probation was correct about some of their calculations?

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1 MS. MERKL: Your Honor, the dispute was relating, in
2 large part, to the calculation for what was then Count 4, is
3 Count 3.

4 As Your Honor knows, this was a global agreement and
5 Mr. Lopez-Perez entered into this agreement in good faith.
6 The Government made a good-faith estimate of the guidelines at
7 the time. To the extent the Court is not going to concur with
8 the Government's plea agreement, we stand by the plea
9 agreement as we stated at the prior sentencing proceeding.

10 It's obviously our estimate.

11 THE COURT: Including this pseudo-count and all of
12 that?

13 MS. MERKL: Well, Your Honor, as you may recall,
14 that was the Government's interpretation of how 2G1.3 applied
15 to the case. The issue that was litigated at length at the
16 prior proceeding is whether or not we were going to be within
17 the 2G1.3 guideline, or moving over to the 2A guideline.

18 Again, Mr. Lopez-Perez made his decision way back
19 when to enter into his guilty plea with regard to Count 12 and
20 in part reliance of the Government's estimate of the overall
21 guidelines, that count is unaffected by the possible
22 miscalculation as to Count 3 and 4.

23 The Government feels that under the circumstances
24 where there's one count to which he's already pled guilty, we
25 are not in a position to change the bargain that he has

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1 already entered into with the Government. It is our, the
2 Government's estimate.

3 THE COURT: I'm sorry, were you finished? I thought
4 you were still --

5 I'm sorry, it's the Government's what?

6 MS. MERKL: It's the Government's estimate, and if
7 there are disagreements about that stip, so be it, but given
8 the situation and the procedural history of the case, in
9 conversations with Mr. Miedel, we decided to continue giving
10 Mr. Benito Lopez the benefit of this bargain and the bargain
11 that all of the defendants had entered into as part of the
12 global agreement.

13 THE COURT: So am I correct that the charge in
14 Count 3 is an identical charge to the charge in Count 4, but
15 just a different time period?

16 MS. MERKL: Yes.

17 THE COURT: The language is different?

18 MS. MERKL: Your Honor, I was just about to point
19 that out.

20 The reason for the split in the count was as of
21 December 2008 the Trafficking Victims Protection Act added
22 reckless disregard as a mens rea possibility, whereas prior to
23 that the time frame alleged in Count 3 from 2005 to 2008, the
24 defendant needed to know the age of the victim, or the means
25 of force that were to be employed.

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1 I would point out that at the prior allocution
2 Mr. Benito Lopez, in fact, allocuted to knowing that
3 Jane Doe 1 was under age at the time for transportation, and
4 that is at pages 57 to 58 of the plea allocution that was
5 heard on May 20th, 2013.

6 So, based on the Government's review of the record,
7 Mr. Lopez-Perez has already effectively allocuted to the
8 essential elements of Count 3, but not the requisite time
9 frame.

10 Mr. Miedel can correct me if he disagrees.

11 MR. MIEDEL: Thanks. That is correct.

12 THE COURT: Are the penalties exactly the same?

13 MS. MERKL: They are, Your Honor. I double-checked
14 the penalties against the old law and the newer book and the
15 only change that I was able to discern was a change in the
16 sub-numbering for the restitution, which I actually did change
17 manually in the plea agreement, but other than that, the
18 penalties are identical.

19 THE COURT: Why is it a lesser included?

20 MS. MERKL: Your Honor, we did not anticipate that
21 Mr. Lopez-Perez was going to allocute to the force element.
22 The force element is what brings it to the 15-year statutory
23 mandatory minimum as opposed to the prostitution of a minor,
24 which brings it under the ambit of the ten-year mandatory
25 minimum.

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1 THE COURT: So, when was it changed? When was the
2 language changed?

3 MS. MERKL: December 2008.

4 THE COURT: Do you have the actual language with
5 you?

6 MS. MERKL: Your Honor, I did not bring the 2008
7 code back. I apologize, I should have thought to do so.

8 If we don't have one readily available to the Court,
9 we can have someone bring it, run back for it.

10 THE COURT: I just want to track the language. I
11 want to double-check the penalties.

12 MS. MERKL: I note that in the statutory citation
13 for Count 3, we indicate clearly on the face of the indictment
14 that it's based on the 2008 code book.

15 (Pause in the proceedings.)

16 THE COURT: All right. So, what was the age of
17 Jane Doe 1 during Count 3?

18 MS. MERKL: Your Honor, I believe she indicated that
19 she was 14 when the defendants recruited her, and so she was
20 between the ages of about 15 to 18 during the time period in
21 Count 3.

22 THE COURT: So, first of all, I take it I have an
23 application, Counsel, to withdraw the plea of Benito
24 Lopez-Perez to Count 4 of the superseding indictment?

25 MR. MIEDEL: Yes, Your Honor, and to instead plead

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1 guilty to the lesser included of Count 3 of the superseding
2 indictment.

3 THE COURT: And I think he specifically does not
4 seek withdrawal of his previously entered plea to Count 12; is
5 that correct?

6 MR. MIEDEL: That is correct.

7 THE COURT: Does the Government oppose the
8 application that Mr. Benito Lopez-Perez be permitted to
9 withdraw his guilty plea to Count 4?

10 MS. MERKL: Under the circumstances, no, Your Honor.

11 THE COURT: All right. So, the application that the
12 plea be withdrawn with respect to Count 4 is granted.

13 Now, I take it you have a separate application this
14 morning, Counsel, and what is that?

15 MR. MIEDEL: Yes. Mr. Benito Lopez-Perez offers to
16 plead guilty to the lesser included count within Count 3 of
17 the superseding indictment.

18 THE COURT: And that is pursuant to an amended plea
19 agreement marked Government's Exhibit 3-A; is that correct?

20 MR. MIEDEL: That's correct, Your Honor.

21 THE COURT: All right. Mr. Benito Lopez-Perez, I am
22 told that you wish to enter a guilty plea to Count 3 of a
23 superseding indictment. This is a very serious decision. I
24 must make sure that you understand all of your rights and the
25 consequences of your plea. That means that I have to ask you

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1 a whole series of questions, as I did the last time, and I do
2 require that your answers to my questions be made under oath
3 so my courtroom deputy will administer an oath to you to tell
4 the truth.

5 Please rise.

6 THE COURTROOM DEPUTY: Please raise your right hand.

7 **B E N I T O L O P E Z - P E R E Z,**

8 called by The Court, having been

9 first duly sworn, was examined and testified

10 as follows:

11 THE COURT: All right.

12 You should understand that having been sworn to tell
13 the truth, you must now do that. If you were to lie on
14 purpose in response to any question that I ask you, you could
15 face a further criminal charge for perjury or false statement.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: If there is anything that I say that you
19 don't understand, then you tell me that you don't understand
20 it and I will try to make it plainer; is that clear?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. How old are you?

23 THE DEFENDANT: 34 years old.

24 THE COURT: Are you presently or have you recently
25 been under the care of a doctor, including a psychiatrist for

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1 any reason?

2 THE DEFENDANT: No.

3 THE COURT: How far in school did you go?

4 THE DEFENDANT: I didn't have any schooling.

5 THE COURT: You never went to school?

6 THE DEFENDANT: No.

7 THE COURT: Your native language is Spanish; is that
8 correct?

9 THE DEFENDANT: Yes.

10 THE COURT: Can you read any Spanish?

11 THE DEFENDANT: A little because I was taught in
12 prison in Mexico.

13 THE COURT: All right.

14 In the past 24 hours, have you taken any pills,
15 drugs, medication or alcohol of any kind?

16 THE DEFENDANT: No.

17 THE COURT: Is your mind clear today?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Miedel, have you discussed the
20 question of a guilty plea with your client in this case?

21 MR. MIEDEL: Yes, I have.

22 THE COURT: In your view, does he understand all of
23 the issues in terms of withdrawing his previous plea and
24 entering this new plea?

25 Do you believe that he clearly understands what has

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1 occurred in this regard?

2 MR. MIEDEL: Yes, I believe he does. I have
3 explained it to him in detail with the help of a Spanish
4 interpreter.

5 THE COURT: Do you believe that he understands all
6 of the rights that he is going to be waiving now by entering
7 once again a guilty plea to a different count?

8 MR. MIEDEL: Yes.

9 THE COURT: Do you have any question at all about
10 his competency to proceed?

11 MR. MIEDEL: No, Your Honor.

12 THE COURT: Now, let me ask you, Mr. Lopez-Perez,
13 have you had enough time to discuss with Mr. Miedel your
14 decision to enter a guilty plea in this case?

15 THE DEFENDANT: Yes.

16 THE COURT: And has he explained to you about your
17 prior plea in this case to a different count, and why that
18 plea was withdrawn, and why you should now plead to a
19 different count?

20 Has he explained all of those issues to you?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you talked to him at some length
23 about these issues?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you satisfied to have him represent

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1 you?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, let me turn to the charge that you
4 are now going to enter a guilty plea to.

5 The charge in Count 3 says that in or about and
6 between July of 2005 and December of 2008, within the Eastern
7 District of New York and elsewhere, that you, it identifies
8 you as the defendant, Benito Lopez-Perez, and then it
9 identifies another defendant as well, but what is only
10 relevant this morning is that you are charged.

11 It says that you knowingly and intentionally
12 recruited, enticed, harbored and transported, provided and
13 obtained by any means, a person, to wit: Jane Doe 1 -- and
14 that is the person I think that has been referred to as
15 Carmen; is that correct?

16 MS. MERKL: Yes, Your Honor.

17 THE COURT: In and affecting interstate and foreign
18 commerce and did benefit financially and by receiving a thing
19 of value from participation in a venture that engaged in such
20 acts.

21 Now, this paragraph 1, he is not pleading guilty to
22 that; correct?

23 MS. MERKL: Correct.

24 THE COURT: So he is only pleading guilty to the
25 second part which says:

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1 Would be used to cause Jane Doe 1 to engage in a
2 commercial sex act, and that Jane Doe had not attained the age
3 of 18 and would be caused to engage in a commercial sex act.

4 Now, the Government has to prove each and every
5 element of that charge beyond a reasonable doubt.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And has your lawyer explained to you
9 what the Government would have to prove to support that
10 charge?

11 THE DEFENDANT: Yes.

12 THE COURT: In other words, they would have to prove
13 a number of elements that you, first of all, that you
14 recruited or enticed or harbored or transported a person.
15 They would have to prove it is the person identified there,
16 which is Jane Doe number 1, and that is the person they have
17 called Carmen.

18 They would have to prove that that enticing or
19 recruiting or harboring or transporting affected interstate
20 and foreign commerce; that it was done, that this was done to
21 benefit you financially by receiving things of value for these
22 acts, and that's money; and that it would be used to cause
23 this person, you would have to have caused this person,
24 Jane Doe number 1, Carmen, to engage in a commercial sex act,
25 and that means something for money.

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1 And then they would have to prove on this count to
2 establish this penalty, that during this period of time,
3 between July '05 and December of '08, at some point during
4 that period of time when all these acts were taking place,
5 that at least at one given point where all these thing are
6 happening, that this Jane Doe had not yet reached the age of
7 18.

8 Do you understand all of those elements?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Now, what I would like to do
11 now is go over with you all of the rights that you would have
12 in connection with going to trial, and these will be rights
13 that you give up if you decide to plead guilty.

14 First of all, you have a right to persist in a plea
15 of not guilty.

16 Do you understand this?

17 THE DEFENDANT: Yes.

18 THE COURT: If you pled not guilty to the charge,
19 you would have a right, under the Constitution and laws of the
20 United States, to a speedy and public trial before a jury with
21 the assistance of your attorney.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: At any trial, you would be presumed
25 innocent. You don't have to prove you're innocent. Under our

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1 system of law, it is the Government that has the burden of
2 proof and that is proof beyond a reasonable doubt that you are
3 guilty of the crime charged. If the Government failed to meet
4 the burden of proof, the jury would have the duty to find you
5 not guilty.

6 Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: In the course of a trial, witnesses for
9 the Government would have to come to court, they would have to
10 testify in your presence, your lawyer would have the right to
11 cross-examine those witnesses, he could raise legal objections
12 to evidence the Government sought to offer against you, he
13 could offer evidence in your behalf.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: He could also subpoena witnesses to
17 court. That means make a person come to court and testify if
18 you believed that that particular witness would be someone
19 helpful to your case.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: At trial, you would have the right to
23 testify in your own behalf if you wanted to. On the other
24 hand, could you not be forced to be a witness at your trial.
25 Under the Constitution and laws of the United States, no

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1 person could be made to be a witness against himself.

2 So if you wanted to go to trial but you chose not to
3 testify, I would tell the jury they cannot hold that against
4 you.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: If instead of going to trial you plead
8 guilty to the crime charged, and if I accept your guilty plea,
9 you will be giving up your right to a trial and all the other
10 rights I have just discussed. There will be no trial in this
11 case and no right to an appeal on the question of whether you
12 did or did not commit the crime. I will simply enter a
13 judgment of guilty based upon your plea.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: If you do plead guilty, I am going have
17 to ask you questions about what you did in order to satisfy
18 myself that you are guilty of the charge.

19 You are going to have to answer my questions and
20 admit your guilt. This means you would be giving up your
21 right not to indiscriminate yourself.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you willing to give up your right to
25 a trial and all the other rights I have just discussed?

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1 THE DEFENDANT: Yes.

2 THE COURT: All right.

3 Now, I have before me a plea agreement which has
4 been marked Government's Exhibit 3-A. It is dated today's
5 date, January 10th, 2014.

6 Ms. Merkl, let me just confirm, does the 16-page
7 agreement before the Court contain the entirety of any
8 understanding that your office has reached with this
9 defendant?

10 MS. MERKL: Yes.

11 THE COURT: Okay. And Mr. Miedel, is that your
12 understanding as well?

13 MR. MIEDEL: Yes, Your Honor.

14 THE COURT: Now, Mr. Miedel, did you go over the
15 terms of the plea agreement with the defendant?

16 MR. MIEDEL: Yes, Your Honor. I, as you know,
17 Mr. Lopez-Perez was represented previously by another attorney
18 and he already pled to the same identical plea agreement, but
19 for the changes that were discussed.

20 At that time the plea agreement was translated
21 word-for-word for him into Spanish. I subsequently --

22 THE COURT: He doesn't read Spanish.

23 MR. MIEDEL: No, it was translated to him orally in
24 Spanish.

25 THE COURT: Oh, okay. I understand.

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1 MR. MIEDEL: I subsequently discussed the changes in
2 the plea agreement with him that we're agreeing to today and
3 the various terms of that agreement.

4 THE COURT: Did you confirm with him that with
5 regard to Count 12 and his guilty plea to Count 12, that he
6 wanted to maintain his plea to that count because that portion
7 of the agreement was originally reached with his prior
8 counsel.

9 Did you confirm that he wanted to maintain his
10 agreement with the Government?

11 MR. MIEDEL: Yes, Your Honor.

12 THE COURT: All right.

13 Mr. Lopez-Perez, I've just asked Mr. Miedel a series
14 of questions.

15 In your view, were his answers to those questions
16 correct?

17 THE DEFENDANT: Yes.

18 THE COURT: So, is it correct then that Mr. Miedel
19 has gone over thoroughly with you the amended plea agreement,
20 3-A?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you believe that you understand all
23 of the provisions of that plea agreement, 3-A?

24 THE DEFENDANT: Yes.

25 THE COURT: Is there anything in the plea agreement

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1 that is not clear that you would like the Court to explain to
2 you in any further detail?

3 THE DEFENDANT: No.

4 THE COURT: Did the Government make some promise to
5 you that is not in this agreement?

6 THE DEFENDANT: No.

7 THE COURT: All right. And it was, in fact,
8 translated to you; correct?

9 THE DEFENDANT: Yes.

10 THE COURT: I understand that you don't read
11 Spanish, but it was translated to you in Spanish, in other
12 words, read to you?

13 THE DEFENDANT: Yes. Yes.

14 THE COURT: All right.

15 There are a couple of parts of the agreement I want
16 to bring to your attention.

17 According to you plea agreement at page 6, you have
18 agreed not to ask the Court to sentence you to a sentence less
19 than 188 months.

20 Do you understand that you have reached that
21 agreement with the Government?

22 THE DEFENDANT: Yes.

23 THE COURT: And did you discuss that with
24 Mr. Miedel, whether you should have agreed to that provision?
25 Did you discuss that with him?

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1 THE DEFENDANT: Yes. Yes.

2 THE COURT: There is another part of the provision I
3 also want to bring specifically to your attention because it
4 involves giving up another right that you have, and that is at
5 paragraph 4.

6 It says the defendant agrees not to file an appeal
7 or otherwise challenge by a petition pursuant to
8 28 U.S.C. Section 2255, or any other provision, the conviction
9 or sentence, in the event that the Court imposes a term of
10 235 months or below.

11 Now what that means is, if the Court imposes a
12 sentence of 235 months, or something less, that you are
13 agreeing to give up your right to challenge that sentence
14 before a higher court.

15 In other words, even if you thought that I made some
16 mistakes in imposing your sentence, according to the terms of
17 your plea agreement, you cannot appeal the Court's decision as
18 long as it is 235 months or something less. You are giving up
19 your right to challenge that sentence. It is a right you
20 would otherwise have.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Also, you are giving up your right to
24 come back at a later time after your sentence has been imposed
25 and when you are serving the sentence, often defendants will

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1 file, you heard me make reference to 28 U.S.C. Section 2255,
2 that is a form of a habeas corpus petition.

3 Often defendants if they have been in prison for
4 some time, may believe that there is a defect in their
5 conviction or sentence, and they will file such a petition.
6 You are also giving up your right to file that kind of
7 petition, again, under the same circumstances, if I give you a
8 sentence of 235 months or something less than that.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Let me go over now what the
12 maximum penalty for the offense charged in Count 3 is.

13 Now, the maximum term of imprisonment for a
14 violation of even the lesser included offense of Count 3, the
15 one I am told you are going to allocute to, that is life. The
16 maximum term is lifetime in prison.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: There is a mandatory minimum period of
20 ten years. What that means is under the law, I cannot give
21 you, if you plead guilty to Count 3, and I accept that guilty
22 plea, I cannot give you a sentence of less than ten years in
23 prison.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: There is also a provision for supervised
2 release. Now, supervised release is a period of time that
3 would begin after you served your prison term. You serve
4 whatever prison term is imposed and then you are released on
5 to what they call supervised release.

6 In this case the maximum term of supervised release
7 could be lifetime supervised release.

8 Now, there is another mandatory minimum of five
9 years. That means at that I would have to put you on
10 supervised release for at least five years, I have no choice
11 about that.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, if you violated any of the terms or
15 provisions of your supervised release, I could then send you
16 back to prison for five full years without giving you any
17 credit for the time that you spend on supervised release.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: There are financial penalties here. The
21 financial penalties can be as high as \$250,000.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, remember that you have also pled
25 guilty to another count, Count 12, and the Court has the power

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1 to add up penalties, so that means that now by pleading guilty
2 to this count, you face fines of a half million dollars
3 because I add -- you can, under the law, add them together.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, there is also a provision for
7 restitution. The Government takes the position that
8 restitution here is mandatory and that restitution should be
9 calculated by determining the amount of money that the victim
10 made from the commercial sex acts and was not paid.

11 Do you have any idea with respect to this count what
12 that would be?

13 MS. MERKL: Your Honor, I believe that the loss
14 estimate submitted by Jane Doe 1 to the Probation Department
15 was in excess of \$2 million.

16 THE COURT: Now, the Court ultimately has to
17 determine the restitution figure. I have to determine if the
18 theory of restitution is accurate, but you should be advised
19 that what the Government's position is going to be is that
20 restitution here is owed in the amount of \$2 million.

21 Do you understand that?

22 MS. MERKL: In excess of.

23 THE COURT: Or in excess of 2 million.

24 That is their position, do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: There is a hundred dollars special
2 assessment. I must impose that hundred dollars special
3 assessment. That means, because there was a special
4 assessment on Count 12, that by pleading guilty now you face
5 two hundred dollars special assessment.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, there other penalties associated
9 with the offense. By pleading guilty to this offense, it
10 provides the basis for you to be removed from the
11 United States.

12 Also, there is a provision that you must register as
13 a Sex Offender Registration.

14 And do you understand those two potential penalties?

15 THE DEFENDANT: Yes.

16 THE COURT: And there is forfeiture. The Government
17 is also going to be asking for forfeiture in the amount of
18 \$70,000.

19 Has that been accomplished yet, I don't recall?

20 MS. MERKL: Your Honor, I believe that we're asking
21 for a forfeiture judgment. I don't believe these defendants
22 have the assets to pay the forfeiture, so I think we had
23 submitted a draft, proposed orders to the Court in advance of
24 the prior sentencing proceeding holding them jointly and
25 severally liable for that forfeiture money judgment.

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1 But Your Honor, as I indicated, we don't have assets
2 that we seized from them. This is not that type of case..

3 THE COURT: What is the defendant's position with
4 respect to forfeiture?

5 MR. MIEDEL: Well, my understanding from the plea
6 agreement is that Mr. Lopez-Perez completed a financial
7 statement dated May 20th, 2013, indicating he has no assets,
8 and as a result, I think that the Government is simply seeking
9 a judgment.

10 THE COURT: But, and that is pursuant to paragraph
11 29 of the superseding indictment?

12 MS. MERKL: Yes, Your Honor.

13 THE COURT: Am I correct, Ms. Merkl, that he is
14 entitled to a jury determination of the forfeiture?

15 MS. MERKL: Yes. If he were to go to trial, he
16 would be entitled to have that presented to a jury.

17 THE COURT: Is it part of the agreement that he is
18 waiving his right to a jury trial on the forfeiture allegation
19 and permitting the Government to enter the judgment?

20 MS. MERKL: I believe that's implied, Your Honor,
21 by, this is one of the penalties that could be imposed in the
22 event of jury trial, just as imprisonment could be imposed in
23 the event of a jury trial.

24 THE COURT: But there would have to be a separate
25 finding of the jury on forfeiture.

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1 MS. MERKL: Or the defendant can waive. Most of the
2 cases in this district, the defendants waive the forfeiture
3 presentation to the jury. It is at the defendant's option.

4 THE COURT: Well, it seems like at the very least he
5 is doing one of those two things in connection with his plea.

6 MS. MERKL: I agree.

7 MR. MIEDEL: Yes, Your Honor, Mr. Lopez-Perez does
8 not seek a jury trial determination of the forfeiture.

9 THE COURT: Have you discussed that with him? Do
10 you want to just talk to him a moment about that?

11 MR. MIEDEL: Yes, just one moment.

12 (Pause in the proceedings.)

13 THE COURT: Did you have an opportunity discuss it
14 with him, Mr. Miedel?

15 MR. MIEDEL: I did, Your Honor.

16 THE COURT: All right.

17 Mr. Lopez-Perez, I had asked you earlier if you were
18 willing to give up your right to a trial on Count 3, a jury
19 trial on Count 3, and you indicated that you were.

20 You would also have a right to have the jury
21 determine, as charged in Count 29, whether property should be
22 forfeited that had been obtained in connection with this
23 offense. You would be entitled to a jury trial on that
24 question as well.

25 Are you willing to give up your right to a jury

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1 trial on that issue as well?

2 THE DEFENDANT: Yes.

3 THE COURT: And have you discussed that issue about
4 whether you should give up that right with your attorney, that
5 specific issue?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Now one of the important
8 factors that the Court has to take into account in determining
9 what your appropriate sentence should be is what your
10 sentencing guideline turns out to be.

11 Have you discussed Sentencing Guidelines with
12 Mr. Miedel and how those guidelines are calculated?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, the Government, in your plea
15 agreement letter, I believe your guideline estimate is still
16 on page 5, 188 to 235, Ms. Merkl?

17 MS. MERKL: Yes, that's correct, Your Honor.

18 THE COURT: So, the Government believes that your
19 guideline range would be in the amount of 188 to 235 months.

20 Again, that is just an estimate. You may remember
21 in the last proceeding there was a lot of discussion as to
22 what the guideline range should be, and you will also remember
23 that it is my determination about what the baseline range
24 should be, and my calculation could always be higher than what
25 the Government has set forth.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, also, as you may well recall from
4 prior discussions, I have not bound to follow a guideline
5 range once I do determine what it is. There are other factors
6 I can take into account. The seriousness of the offense, the
7 need to promote respect for the law, the need to provide just
8 punishment, to consider deterrence to criminal conduct. I
9 also have to consider your own history and characteristics.

10 So, those are all other factors that I consider
11 together with what I believe the guideline range should be.
12 It is always possible that I can impose a sentence that is
13 higher than a recommended guideline range.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Also, the Federal sentencing system is
17 different from the State sentencing system that we have.
18 There are no parole boards or parole commissions so what you
19 should understand is whatever sentence you do receive will be
20 pretty close to the actual amount of time you have to spend in
21 prison. You don't have the opportunity to appeal to a parole
22 board to get out early because there are no parole boards in
23 this system.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Finally, if you enter a guilty plea
2 today, your guilty plea will stand. You cannot come back to
3 court at the time of sentence and tell me you have changed
4 your mind, you want to go to trial. At that point it is too
5 late.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: So, Mr. Lopez-Perez, do you have any
9 questions that you want to ask the Court about the new charge
10 that you are pleading guilty to, your rights, or anything else
11 at all related to this matter that might not be clear?

12 THE DEFENDANT: No.

13 THE COURT: Mr. Miedel, do you know of any reason
14 why your client should not enter this plea of guilty to the
15 charge in Count 3?

16 MR. MIEDEL: No, Your Honor.

17 THE COURT: Are you ready to plead?

18 THE DEFENDANT: Yes.

19 THE COURT: How do you plead to the charge in
20 Count 3; guilty or not guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: No, are you pleading guilty or not
23 guilty?

24 THE DEFENDANT: Guilty.

25 THE COURT: Are you making this plea of guilty

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1 voluntarily and of your own free will?

2 THE DEFENDANT: Yes.

3 THE COURT: Has anyone threatened, forced, or
4 pressured you in any way to plead guilty?

5 THE DEFENDANT: No, no.

6 THE COURT: Other than the agreement with the
7 Government, has anyone made you promises that have caused you
8 to plead guilty?

9 THE DEFENDANT: No.

10 THE COURT: Has anyone promised you what sentence
11 you would receive?

12 THE DEFENDANT: No.

13 THE COURT: All right then, Mr. Lopez-Perez, I need
14 to hear from you in your own words what you did in connection
15 with the charge in Count 3.

16 MR. MIEDEL: Your Honor, in light of the fact that
17 Mr. Lopez-Perez is illiterate and has no education, as you
18 know, he can't read a statement into the record about the
19 allocution. So, he and I have prepared a statement together
20 that I would like to read into the record, and then I would
21 ask you to ask him to affirm the correctness of, and ask any
22 follow-up questions that you have.

23 THE COURT: Does the Government object to that
24 procedure?

25 MS. MERKL: No, Your Honor, as long as

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1 Mr. Lopez-Perez affirms each fact.

2 THE COURT: Okay.

3 MR. MIEDEL: So, Your Honor, as to Count 3 of the
4 indictment, during the period alleged in the indictment,
5 July 2005 and December 2008.

6 THE COURT: Can I just ask one question, I'm sorry
7 to interrupt.

8 In December of 2008, was the victim not yet 18?

9 MS. MERKL: I don't believe so, Your Honor. I
10 believe her birthday was in September.

11 THE COURT: Of what?

12 MS. MERKL: It was '90 or '91 is her birth date, so
13 I believe she turned 18 during this period, 2005 to 2008.

14 THE COURT: Don't we need to have the allocution
15 prior to the time she turned 18?

16 MS. MERKL: Yes, he said between 2005 and 2008.

17 THE COURT: Yes, but at some point in 2008, she
18 is 18.

19 MR. MIEDEL: I think they do 2007 because this
20 conduct occurred between 2005 and 2007 as well.

21 MS. MERKL: That's fine, Your Honor.

22 THE COURT: So, you want to limit it to 2005 to
23 2007?

24 MR. MIEDEL: Yes.

25 Between the period of July 2005 and December 2007,

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1 I, knowingly with others, did intentionally house and
2 transport a woman referred to in the indictment as Jane Doe 1
3 for the purpose of engaging in prostitution.

4 I did so by arranging for her to be transported from
5 Mexico to New York in Queens. In Queens, I housed her in an
6 apartment and arranged for her to be transported to various
7 locations for the purpose of prostitution.

8 I benefitted financially from her prostitution
9 activities and did so knowingly. I knew that she was younger
10 than 18 years old at the time.

11 THE COURT: Mr. Lopez-Perez, did you understand each
12 of the things your counsel just said?

13 THE DEFENDANT: Yes. Yes.

14 THE COURT: Is that statement that was made on your
15 behalf by counsel, is everything that was said in that
16 statement accurate?

17 THE DEFENDANT: Yes.

18 THE COURT: This woman, who's been called
19 Jane Doe 1, did you also know her to use the name Carmen?

20 THE DEFENDANT: Yes.

21 THE COURT: And I take it, counsel, you have
22 discussed with the Government their evidence underlying this
23 account and you are satisfied that Jane Doe 1/Carmen is a
24 person who exists and the person about whom your client is
25 speaking.

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1 MR. MIEDEL: Yes, I have.

2 THE COURT: Does the Government think anything
3 further needs to be said?

4 MS. MERKL: Your Honor, I believe at the prior
5 proceeding you asked the question directly to the defendant
6 and I just quote from page 57 of the transcript, you asked him
7 directly, did you know that the person that you have just
8 talked about, the person you call Carmen that was brought here
9 for prostitution, did you know she was not yet 18 years old.

10 I would request that you just confirm it directly
11 with him because of Mr. Miedel's statement for the allocution.
12 I would just like to confirm the facts that he brought her
13 here, that he knew her to be under 18 at the time, and that
14 she was transported to from Queens from Mexico.

15 THE COURT: Mr. Lopez-Perez, did you bring the woman
16 identified as Carmen from Mexico to the United States?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you find a place for her to reside
19 here?

20 THE DEFENDANT: Yes.

21 THE COURT: Between the dates of 2005 and 2007, did
22 you cause her to go out and commit acts of prostitution in
23 Queens?

24 THE DEFENDANT: Yes.

25 THE COURT: And did you take the money that she made

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1 doing that from her?

2 THE DEFENDANT: Yes.

3 THE COURT: Did you know that at the time that you
4 did that, that she was under the age of 18?

5 THE DEFENDANT: Yes.

6 THE COURT: Anything else, Ms. Merkl?

7 MS. MERKL: Your Honor, I think that that is
8 sufficient.

9 THE COURT: Mr. Miedel, do you believe that those
10 statements satisfy an allocution to that count?

11 MR. MIEDEL: I do.

12 THE COURT: All right. Based on the information
13 given to me, I find the defendant is acting voluntarily, he
14 fully understands the charge, his rights and the consequences
15 of his plea, and that there is a factual basis for the plea.

16 So I therefore accept the plea of guilty to Count 3.

17 Mr. Miedel, do you intend to make any additional
18 sentencing submission on behalf of the defendant?

19 MR. MIEDEL: I may file a brief addendum or submit
20 the additional submission, and I'll do so within whatever time
21 you wish to receive it.

22 THE COURT: Can you do that by a week from today?

23 MR. MIEDEL: Can I do it two weeks before
24 sentencing, whenever that is.

25 THE COURT: When is two weeks before sentencing?

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1 MR. MIEDEL: It would actually be --

2 THE COURTROOM DEPUTY: January 24th.

3 THE COURT: And the week after that would be what,
4 Ms. Holley.

5 THE COURTROOM DEPUTY: January 31st, Judge.

6 Is that for the Government to respond?

7 THE COURT: Right.

8 So if you want to make an additional submission, you
9 make it on January 24th.

10 And the Government could respond to that by the
11 31st.

12 There will have to be an amended PSR, because the
13 PSR needs to reflect the charge the defendant pled guilty to,
14 so I take it the Government will notify the
15 Probation Department of what has taken place.

16 MS. MERKL: Certainly.

17 THE COURT: Okay. And that should be, if they can
18 do it by, I would ask that they try to do it by January 20th.

19 MS. MERKL: Your Honor, I expect that it will not be
20 a lengthy amendment for them since the underlying facts are
21 all contained within the PSR. It's a matter of changing the
22 count numbering.

23 I will contact Probation immediately after court and
24 provide them with the new plea agreement.

25 THE COURT: All right.

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1 Now, I don't know whether other defendants are going
2 to make any other objections to issues that the Government has
3 raised with respect to either restitution, I guess there were
4 submissions on the restitution question by the defense?

5 MS. MERKL: I don't think there was any response to
6 the Government's supplemental letter that provided support to
7 the Court. I haven't seen anything.

8 THE COURT: All right. If there is going to be in
9 any response to the issues of restitution or the issues
10 regarding those within, providing their identity to the Court
11 at the time that they speak, you now know for certain that the
12 Government is not going to take the position that they are now
13 going to trial on all the charges here.

14 So, there is nothing left open for the Defense
15 Counsel to be concerned about that would prevent them from
16 responding to these two issues.

17 So, any response to these issues need to be filed by
18 January 17th, a week from today.

19 MR. MORRIS: Your Honor, may I just ask for an
20 additional week, because I know Mr. Kirchheimer's going to be
21 back on January 15th, and I think he would need more than two
22 days, or he might need more than two days to prepare his
23 response.

24 THE COURT: Well, he has known for some time what
25 the Government's position is with respect to these victims,

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1 about them saying their identity or not saying their identity.
2 I don't know why he would need an entire week. But since he's
3 just getting back on the 15th, the 17th is a Friday?

4 THE COURTROOM DEPUTY: Yes, Judge.

5 THE COURT: Then his response can be the following
6 Monday.

7 MR. MORRIS: Thank you, Judge.

8 MR. RADICK: Is that just for him or for everyone?

9 THE COURT: That's just for him.

10 THE COURTROOM DEPUTY: That's a holiday.

11 THE COURT: Oh, it is. Then the 21st.

12 MR. MORRIS: Thank you, Judge.

13 THE COURT: Is there anything else that either side
14 thinks that we need to take up?

15 MR. MIEDEL: No, Your Honor.

16 MS. MERKL: No, thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 ALL: Thank you.

19 (Matter concluded.)
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